



## *COMMONWEALTH of VIRGINIA*

### *DEPARTMENT OF ENVIRONMENTAL QUALITY*

#### VALLEY REGIONAL OFFICE

Molly Joseph Ward  
Secretary of Natural Resources

P.O. Box 3000, Harrisonburg, Virginia 22801  
(540) 574-7800 Fax (540) 574-7878  
Physical Address: 4411 Early Road, Harrisonburg, VA  
[www.deq.virginia.gov](http://www.deq.virginia.gov)

David K. Paylor  
Director

Amy Thatcher Owens  
Regional Director

**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
LOVE'S TRAVEL STOPS & COUNTRY STORES, INC.  
FACILITY ID No.: 6009303  
POLLUTION COMPLAINT No.: 2015-6146**

#### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.34:20, between the State Water Control Board and Love's Travel Stops & Country Stores, Inc. for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

#### **SECTION B: Definitions**

Unless the context indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Aboveground storage tank" or "AST" means any one or combination of tanks, including pipes, used to contain an accumulation of oil at atmospheric pressure, and the volume of which, including the volume of the pipes, is more than ninety percent above the surface of the ground. This term does not include line pipe and breakout tanks of an interstate pipeline regulated under the Hazardous Liquid Pipeline Safety Act of 1979 or the Natural Gas Pipeline Safety Act of 1968, as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.

3. "Containment and cleanup" means abatement, containment, removal and disposal of oil and, to the extent possible, the restoration of the environment to its existing state prior to an oil discharge.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.
7. "Free product" refers to a regulated substance that is present as a nonaqueous phase liquid (e.g., liquid not dissolved in water).
8. "Love's" means Love's Travel Stops & Country Stores, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Love's is a "person" within the meaning of Va. Code § 62.1-44.3.
9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. "Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity. *See* Va. Code §62.1-44.34:14.
11. "Operator" means any person who owns, operates, charters, rents or otherwise exercises control over or responsibility for a facility or a vehicle or vessel.
12. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
13. "Person" means any firm, corporation, association or partnership, one or more individuals, or any governmental unit or agency thereof.
14. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.
15. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 11 (Va. Code §§ 62.1-44.34:14 through 62.1-44.34:23) of the State Water Control Law addresses discharge of oil into waters.
16. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.

17. "Va. Code" means the Code of Virginia (1950), as amended.
18. "VAC" means the Virginia Administrative Code.
19. VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.

**SECTION C: Findings of Fact and Conclusions of Law**

1. Love's owns and operates Love's Travel Store #305 (Facility) located in Toms Brook, VA. The Facility stores a regulated substance in the form of diesel in two ASTs. Additionally the Facility stores diesel, gasoline, and used oil in eight Underground Storage Tanks.
2. On June 1, 2015, in response to a citizen complaint of diesel fuel welling up from below ground at the Facility, DEQ staff performed an inspection and observed diesel fuel on the land surface at the Facility and between pumps 19 and 20. Diesel fuel to these pumps is supplied by an AST. Facility personnel informed DEQ that the upwelling of diesel fuel had been occurring for two weeks. DEQ was not notified of a discharge of oil at the Facility.
3. On June 4, 2015, DEQ staff performed an additional site visit and observed diesel fuel (sheen) entering storm drains at the Facility.
4. Va. Code § 62.1-44.34:18 prohibits the discharge of oil into or upon state waters, lands, or storm drain systems that violate applicable water quality standards or cause a film or sheen upon or discoloration of the surface of the water.
5. Va. Code § 62.1-44.34:19 requires any person causing or permitting a discharge of 25 gallons or more of oil that enters, or may reasonably be expected to enter, state waters, lands or storm drain systems within the Commonwealth immediately upon learning of the discharge to notify the Board.
6. On June 17, 2015, DEQ issued Notice of Violation No. 15-06-VRO-003 to Love's for violations of Va. Code § 62.1-44.34:18 and 62.1-44.34:19.
7. On July 8, 2015, DEQ staff had a meeting with Love's representatives. DEQ requested additional documentation, including the amount of diesel fuel discharged, to be submitted by August 9, 2015.
8. On August 17, 2015, Love's submitted a written response to the NOV and the July 8, 2015 meeting. Love's included a repair date of June 4, 2015 for the line failure that caused the discharge of diesel fuel and documentation of training provided in accordance with their Oil Discharge Contingency Plan and updated emergency contact procedures.

Love's estimates that approximately 1,120 gallons of diesel fuel was discharged based on inventory records.

9. On August 19, 2015, Love's submitted a Site Characterization Report (SCR) to DEQ for review. The SCR suggested continued recovery of free product from the monitoring wells until no more free product was present. Additionally, the SCR Site Description suggested that there were no downstream wells or human health exposure risks, as the closest well (owned by Love's) was 250 feet from the discharge area.
10. Based on the results of the June 1, 2015 and June 4, 2015 inspections, the July 8, 2015 meeting, and the documentation submitted on August 17, 2015 and August 19, 2015, the State Water Control Board concludes that Love's has violated Va. Code § 62.1-44.34:18, which prohibits the discharge of oil into or upon state waters, lands, or storm drain systems, as described in paragraphs C(2) through C(3), above.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code § 62.1-44.34:20, the Board orders Love's and Love's agrees to:

1. Pay a civil charge of \$32,804.80 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Love's shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Petroleum Storage Tank Fund (VPSTF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Love's shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Love's for good cause shown by Love's, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. 15-06-VRO-003 dated June 17, 2015. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Love's admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Love's consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Love's declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Love's to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Love's shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Love's shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Love's shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and

- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and Love's. Nevertheless, Love's agrees to be bound by any compliance date which precedes the effective date of this Order.
- 11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after Love's has completed all of the requirements of the Order;
  - b. Love's petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Love's.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Love's from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by Love's and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of Love's certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Love's to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Love's.
- 14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, Love's voluntarily agrees to the issuance of this Order.

And it is so ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2016

\_\_\_\_\_  
Amy T. Owens, Regional Director  
Department of Environmental Quality

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Love's Travel Stops & Country Stores, Inc. voluntarily agrees to the issuance of this Order.

Date: 5-2-2016 By: [Signature] Vice President, Construction  
(Person) (Title)  
Love's Travel Stops & Country Stores, Inc.

State of Oklahoma  
~~Commonwealth of Virginia~~  
City/County of Oklahoma

The foregoing document was signed and acknowledged before me this 2ND day of MAY, 2016 by John T. Ross who is Vice President of Construction of Love's Travel Stops & Country Stores, Inc., on behalf of the corporation.

[Signature]  
Notary Public

07008736  
Registration No.

My commission expires: 09-19-19

Notary seal:

